be executed by the defendants in the same capacities as they executed the two original charges.

1st, 2nd and 4th defendants to pay the costs of the proceedings.

Judgment for the plaintiff.

KOK HO TEIK & ANOTHER v. YEAP LEAN SENG & 5 OTHERS.

[Orig. Civ. Juris. (Jobling, J.) January 18, 1951]
[Penang — Civil Suit No. 267 of 1949]

Japanese Judgments and Civil Proceedings Ordinance, 1946 s. 7 — Dealings in Land (Occupation Period) Ordinance, 1949 s. 6 — Whether section 7 of the Japanese Judgments and Civil Proceedings Ordinance is impliedly repealed by the Dealings in Land (Occupation Period) Ordinance — Whether Japanese Judgment which has been registered can be pleaded as a defence.

In this case the plaintiffs, the trustees of the Will of Cheong Keng Quee (deceased) claimed a declaration that they are entitled to certain land in Penang. It appeared that in June and August 1943, Orders of Court were made by the Japanese Court ordering **inter alia** that the land be sold to one Yeap Chor Ee and that by an Indenture dated the 25th August 1943, the land was conveyed to the first four defendants by direction of Yeap Chor Ee. The defendants claimed that the sale to Yeap Chor Ee was duly authorised by the Court and the Conveyance dated 25th August 1943, being properly executed gave the first four defendants an indefeasible title to the land. No application for the substitution of the Japanese Orders had been made.

For the Plaintiffs it was contended that the Japanese Order of Court could not be pleaded by the Defendants in view of section 7 of the Japanese Judgments and Civil Proceedings Ordinance 1946.

For the Defendants it was contended that section 6(2) of the Dealings in Land (Occupation Period) Ordinance 1949 altered the position by providing that where a Japanese decree was registered it was for the same validity force and effect as a decree of a competent Court.

Held, (1) that Section 7 of the Japanese Judgments and Civil Proceedings Ordinance 1946, has not been impliedly repealed by Section 6 of the Dealings in Land (Occupation Period) Ordinance 1949; (2) that as no Order of a competent Court had been substituted for the Japanese orders, they could not be pleaded in any Court and therefore the conveyance was not binding on the estate.

Case referred to :—

(1) *In re Lewis and Berry* (1936) 1 Ch. 274.

ACTION.

E. D. Shearn (*F. G. Pooley* and *Lim Khye Seng* with him) for the plaintiffs.

C. D. D. Hogan (*R .D. Hume* with him) for the defendants.

Jobling, J. : — The plaintiffs' claim in this Suit is for a declaration that they are entitled as trustees of the Will of Cheang Keng Quee deceased to certain land in Penang known as Lot 8[I] Town Subdivision 23 and for a further declaration that a conveyance of this land to the first four defendants made on 25th August, 1943 is not binding on the Estate of which they are trustees.

The facts in the matter are not in dispute.

The deceased Cheang Keng Quee died on 13th December, 1901 possessed of the land in question and the position immediately prior to the Japanese occupation of Malaya was as follows : — The trustees of the Estate were the two plaintiffs together with Cheang Kok Sang and Cheang Chee Choong and an Order had been made for the administration of the trusts of the Will and for the appointment of Messrs. E. V. C. Thomson and V. C. Nolan as Receivers and Managers. The land in question had been mortgaged together with other land to the Hongkong & Shanghai Banking Corporation for $183,000/-. Further, two Orders of Court had been obtained, authorising the sale of the land and approving its sale to one Lim Lean Teng for $450,000/-. This sale did not, however, take place because of the outbreak of war with Japan.

During the Japanese occupation of Malaya the Receivers and Managers were interned and Cheang Chee Choong was the only trustee present in Penang; Cheang Kok Sang and the second plaintiff were in Hongkong and the first plaintiff was in Ipoh.

On 1st July, 1942, the Japanese authorities published a Decree purporting to vest in the Public Trustee all estates administered or managed by firms, companies and individuals deemed to be enemies.

On 5th May, 1943 Cheang Chee Choong, the only trustee present in Penang, applied to the Court by way of Originating Summons No. 44 for directions regarding the land in question and Orders of Court were made on 22nd June, 1943, 5th August, 1943 and 10th August, 1943 declaring the original Order for sale of the property to be of no effect, ordering that the property be sold by private tender, declaring Yeap Chor Ee to be the purchaser at the price of $935,000/- and authorising the fifth defendant as Officer-in-Charge of the Public Trustee's Office, Penang to execute the conveyance in favour of the purchaser on behalf of the absent trustees Cheang Kok Sang, Kok Ho Teik and Cheang Kok On.

On 25th August, 1943 an Indenture conveying the property to the first, second, third and fourth defendants by direction of Yeap Chor Ee was executed by the trustee Cheang Chee Choong and by the fifth defendant on behalf of the other three trustees.

On 26th August, 1943 the Orders of Court made by the Japanese Court dated 5th August, 1943 and 10th August, 1943 authorising the sale of the property were registered in the Registry of Deeds.

The plaintiffs are the sole remaining trustees of the Estate as Cheang Kok Sang died in 1944 and Cheang Chee Choong died in 1947.

On these facts the Defendants claim that the sale to Yeap Chor Ee was duly authorised by the Court and that the Conveyance dated 25th August, 1943 was properly executed and gave the first four defendants an indefeasible title to the land.

For the plaintiffs it was contended *first*, that the Orders of the Japanese Court dated 5th and 10th August, 1943 could not be pleaded by the defendants in view of the provisions of section 7 of the Japanese Judgments and Civil Proceedings Ordinance, 1946; *secondly*, that if these Orders could be pleaded they should be set aside under section 3 of the last mentioned Ordinance; and *thirdly*, that the Japanese Decree of 1st July, 1942, if it existed, was contrary to international law and in any case did not refer to the property in question and gave the fifth defendant no right to deal with it.

The question whether the Orders of Court can be pleaded by the defendants presents some difficulty. Section 7 of the Japanese Judgments and Civil Proceedings Ordinance, 1946 reads as follows:—

"7. No Japanese decree shall be pleaded by way of set-off or counter-claim or otherwise in any proceedings unless the judgment, order, decree or grant of an appropriate Court has been substituted for such Japanese decree under the provisions of section 5 of this Ordinance."

and by section 45 of the Interpretation and General Clauses Ordinance, 1948, it is provided that the word "otherwise" is to be construed disjunctively, unless there appears to be a contrary intention.

These provisions clearly debar the pleading of any Japanese Order of Court in any proceedings unless an Order of the British Court had been substituted for it. No such substituted Orders have been obtained in this case and the period within which they could be applied for without special leave of the Court has expired.

But in 1949 the Dealings in Land (Occupation Period) Ordinance was enacted and it has been contended that that Ordinance altered the position. Sub-sections (2) and (3) of section 6 are relevant and read as follows:—

"(2). Where a Japanese decree was registered, whether provisionally or finally, or a mutation effected by a Japanese decree was registered, during the occupation period or has been registered after the expiration of that period and before the expiration of three months from the commencement of this Ordinance or such extended time as the Court may allow, such Japanese decree, unless it has been set aside or in so far as it has not been set aside by the Court either before the commencement of this Ordinance or in an action begun within six months after such commencement, shall, in favour of a purchaser deriving title, whether mediately or immediately, to any estate or interest in land through or under such decree, have the same validity, force and effect as if it had been made by a court of competent jurisdiction, and the provisions of section 75 of the Conveyancing and Law of Property Ordinance shall apply to such Japanese decree in the same manner as if it were an order of the court to which that section applies."

"(3). Notwithstanding any provision as to time contained in the Japanese Judgments and Civil Proceedings Ordinance, 1946, an application to set aside or appeal against a Japanese decree affecting land or an application to substitute a judgment, order, decree or grant of the appropriate Court for a Japanese decree affecting land made under section 3 or section 5 of that Ordinance may be made within six months from the commencement of this Ordinance."

Mr. Hogan for the defendants pointed out that sub-section (2) referred specifically to a Japanese decree and submitted that it gave a Japanese decree when registered the same validity, force and effect as a decree of a Court of competent jurisdiction. This he contended impliedly repeals section 7 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, so far as it concerns Japanese decrees which have been registered.

On the other hand Mr. Shearn for the plaintiffs has contended that sub-section (3) above quoted refers specifically to applications under sections 3 and 5 of the Japanese Judgments and Civil Proceedings Ordinance, 1946 (that is to say applications to set aside a Japanese decree or to substitute for it a decree of a British Court) and by enlarging the time in which such applications might be made discloses that the legislature had in mind section 7 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, and intended to give a method of escape from its restriction. It was submitted that the extension given in sub-section (3) can only be for the purposes of sub-section (2) and that there was no implied repeal of section 7.

Admittedly there is much force in both these submissions and it is difficult to say exactly what the legislature intended.

The matter turns on the question whether the provisions of section 6 of the Dealings in Land (Occupation Period) Ordinance, 1949, impliedly repeal section 7 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, as regards Japanese decrees which have been registered.

It is clear that the provisions of the 1946 Ordinance were considered when the 1949 Ordinance was enacted as they are referred to specifically in sub-section (3) of section 6 above quoted, but no words were inserted in the later Ordinance to limit the effect of the earlier one. In these circumstances the presumption is clearly against any implication to repeal, and before the defendants' submission can be accepted

the Court must be satisfied that no other reasonable interpretation of the Section is possible. As Farwell, J. said in *In re Lewis and Berry*[1] :—

> "It is well settled that the Court does not construe a later Act as repealing an earlier Act unless it is impossible to make the two Acts or the two sections of the Act stand together, i.e. if the section of the later Act can only be given a sensible meaning if it is treated as impliedly repealing the section of the earlier Act."

Is it impossible to make section 7 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, and section 6 of the Dealings in Land (Occupation Period) Ordinance, 1949 stand together? The two sections read together can be paraphrased as follows : — a Japanese decree may be registered in the Registry of Deeds and when registered shall have the same validity, force and effect as a decree of a competent Court except that it may not be pleaded in any Court unless an Order of a competent Court has been substituted for it within six months of the date of the coming into force of the 1949 Ordinance.

There does not appear to be anything anomalous or inconsistent in this statement of the law. It gives a meaning to each of the provisions of the law whereas the view put forward by the defendants ignores sub-section (3) of section 6 of the 1949 Ordinance. The defendants' view could only be accepted if that sub-section was regarded as meaningless.

The restriction as regards pleading does not nullify a registered Japanese decree. It remains valid and effectual for other purposes and in due time upon the expiration of the period of limitation within which actions may be brought (see particularly the Limitation (Amendment) Ordinance, 1949) will give good title to the land.

In my opinion a sensible meaning can be given to the two sections when read together and section 6 of the later Ordinance does not impliedly repeal section 7 of the earlier one. I find therefore that section 7 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, debars the defendants from pleading the Japanese decrees dated 5th and 10th August, 1943 and that accordingly the defendants' claim to the land is unsupported. There is therefore no need to consider the other submissions in this matter. The plaintiffs have established their right to the land and are entitled to the relief claimed.

There remains the question of the counterclaim.

The defendants Nos. 1, 2, 3 and 4 paid $935,000/- occupation currency on 25th August, 1943, as the purchase price of the land in question and this money was received by one of the trustees of the Estate of Cheang Keng Quee deceased and used for the purposes of the Estate. In these circumstances the plaintiffs have offered to reimburse the defendants Nos. 1, 2, 3 and 4 the value of the sum of $935,000/- on 25th August, 1943, as ascertained under the Debtor and Creditor (Occupation Period) Ordinance, 1948. The defendants, however, claim that the $935,000/- received by the estate benefitted the estate to the extent of $526,850.82 as it was used to repay debts due by the estate in Malayan currency to this amount and that therefore they are entitled to a refund of the latter sum.

I think it is clear however that the defendants are only entitled to reimbursement of the value of the actual amount they paid over. What the estate did with the money does not concern them and they cannot either benefit or suffer from the use to which it was put.

During the hearing the plaintiffs offered to forego the claim for rents and profits up to 1st April, 1946, if the defendants would give up their claim for interest at 3% to the same date, and this was accepted.

Judgment will therefore be entered for the plaintiffs for the reliefs claimed as follows :—

(a) a declaration that they are entitled to the land in question as trustees of the estate of Cheang Keng Quee;

(b) a declaration that the Indenture of 25th August, 1943 purporting to convey the land to first, second, third and fourth defendants is not binding on the estate;

(c) an Order cancelling the registration of the Indenture of 25th August, 1943 No. 38 in Volume 838 in the Registry of Deeds;

(d) an account of rents and profits received from the 1st April, 1946 in respect of the land and payment of the amount found to be due;

(e) possession of the land and premises.

On the counterclaim the plaintiffs will pay to the defendants the value of the sum of $935,000/- occupation currency as at 25th August, 1943 as ascertained under the Schedule to the Debtor and Creditor (Occupation Period) Ordinance, 1948, together with interest thereon at 3% *per annum* from the 1st April, 1946, to the 1st October, 1949, and thereafter at 6% *per annum*.

The first, second, third, fourth and sixth defendants will pay the costs of the action certified for two Counsel.

The fifth defendant will pay his own costs.

Order accordingly.